[23 FR 5905, Aug. 5, 1958]

§ 791.2 Joint employment.

(a) A single individual may stand in the relation of an employee to two or more employers at the same time under the Fair Labor Standards Act of 1938, since there is nothing in the act which prevents an individual employed by one employer from also entering into an employment relationship with a different employer. A determination of whether the employment by the employers is to be considered joint employment or separate and distinct employment for purposes of the act depends upon all the facts in the particular case. If all the relevant facts establish that two or more employers are acting entirely independently of each other and are completely disassociated with respect to the employment of a particular employee, who during the same workweek performs work for more than one employer, each employer may disregard all work performed by the employee for the other employer (or employers) in determining his own responsibilities under the Act.[4] On the other hand, if the facts establish that the employee is employed jointly by two or more employers, i.e., that employment by one employer is not completely disassociated from employment by the other employer(s), all of the employee's work for all of the joint employers during the workweek is considered as one employment for purposes of the Act. In this event, all joint employers are responsible, both individually and jointly, for compliance with all of the applicable provisions of the act, including the overtime provisions, with respect to the entire employment for the particular workweek.[5] In discharging the joint obligation each employer may, of course, take credit toward minimum wage and overtime requirements for all payments made to the employee by the other joint employer or employers.

(b) Where the employee performs work which simultaneously benefits two or more employers, or works for two or more employers at different times during the workweek, a joint employment relationship generally will be considered to exist in situations such as:

(1) Where there is an arrangement between the employers to share the employee's services, as, for example, to interchange employees;[6] or

(2) Where one employer is acting directly or indirectly in the interest of the other employer (or employers) in relation to the employee;[7] or

(3) Where the employers are not completely disassociated with respect to the employment of a particular employee and may be deemed to share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer.[8]

[23 FR 5905, Aug. 5, 1958, as amended at 26 FR 7732, Aug. 18, 1961]

---

[4] *Walling* v. *Friend, et al.*, 156 F. 2d 429 (C. A. 8).

[5] Both the statutory language (section 3(d) defining ''employer'' to include anyone acting directly or indirectly in the interest or an employer in relation to an employee) and the Congressional purpose as expressed in section 2 of the Act, require that employees generally should be paid overtime for working more than the number of hours specified in section 7(a), irrespective of the number of employers they have. Of course, an employer should not be held responsible for an employee's action in seeking, independently, additional part-time employment. But where two or more employers stand in the position of ''joint employers'' and permit or require the employee to work more than the number of hours specified in section 7(a), both the letter and the spirit of the statute require payment of overtime.

[6] *Mid-Continent Pipeline Co., et al.* v. *Hargrave*, 129 F. 2d 655 (C.A. 10); *Slover* v. *Wathen*, 140 F. 2d 258 (C.A. 4); *Mitchell* v. *Bowman*, 131 F. Supp., 520 (M.D. Ala. 1954); *Mitchell* v. *Thompson Materials & Construction Co., et al.*, 27 Labor Cases Para. 68, 888; 12 WH Cases 367 (S.D. Calif. 1954).

[7] Section 3(d) of the Act; *Greenberg* v. *Arsenal Building Corp., et al.*, 144 F. 2d 292 (C.A. 2).

[8] *Dolan* v. *Day & Zimmerman, Inc., et al.*, 65 F. Supp. 923 (D. Mass. 1946); *McComb* v. *Midwest Rust Proof Co., et al.*, 16 Labor Cases Para. 64, 927; 8 WH Cases 460 (E.D. Mo. 1948); *Durkin* v. *Waldron., et al.*, 130 F. Supp., 501 (W.D. La. 1955). See also *Wabash Radio Corp.* v. *Walling*, 162 F. 2d 391 (C.A. 6).